STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

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| **Michael & Diana Lonning,**<br>Petitioner-Appellants,<br><br>**v.**<br><br>**Black Hawk County Board of Review,**<br>Respondent-Appellee. | **ORDER**<br><br>**Docket No. 09-07-0822**<br>**Parcel No.8914-15-202-011** |

On October 12, 2009, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellants, Michael and Diana Lonning, requested a telephone hearing and submitted evidence in support of their petition. They are self-represented. The Board of Review designated Assistant County Attorney David J. Mason as its legal representative. It also submitted documentary evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Michael and Diana Lonning, owners of property located at 2921 Wellington Drive, Cedar Falls, Iowa, appeal from the Black Hawk County Board of Review decision reassessing their property. According to the property record card, the subject property consists of a two-story dwelling having 2562 square feet of above-grade living area, a full basement with 725 square feet of finished area, and a 1112 square-foot attached garage. It was built in 2002 and is situated on a 0.562 acre site.

The real estate was classified as residential on the initial assessment of January 1, 2009, and valued at $437,840, representing $61,250 in land value and $376,590 in improvement value.

The previous owners of the property, Asad and Farah Cheema, filed a protest with the Board of Review on May 5, 2009. They protested on the grounds that the assessment was not equitable as

compared with assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a); and that the property is assessed for more than the value authorized by law under section 441.37(1)(b). They claimed that $395,000; allocated $61,250 to land and $333,750 in the dwelling was the actual value and a fair assessment of the property. The Board of Review granted the protest, in part, and reduced the assessment to $400,180, allocating $61,250 to land and $338,930 to the dwelling.

The Board of Review decision was mailed to the Cheemas on June 10, 2009. However, Michael and Diana Lonning purchased the property from the Cheemas on June 5, 2009, after the Board of Review hearing, but before the letters were mailed.

Then on June 30, 2009, the Lonnings, now the owners of the property, filed their appeal with this Board. They reasserted the claim that the property was over-assessed. Although they marked the box indicating there had been a downward change in value, the Lonnings claimed on their petition that the assessed value was more than the fair market value of the property. They seek a reduction in assessment to their purchase price of $385,000.

Attorney Mason, on behalf of the Board of Review, raised three procedural issues at the beginning of the hearing. First, he asserted that the Lonnings lacked standing to bring the appeal, since they had not initially filed a protest with the Board of Review. Second, Mason contended that since the relief requested before the Board of Review was a reduction in assessment to $395,000, the Lonnings were prohibited from requesting a lower reduction to $385,000. Lastly, he claimed that since the ground of inequity was not marked or otherwise indicated on the Appeal Board petition, the Lonnings could not raise this ground on appeal. We will address each of these issues in the conclusions of law.

Michael Lonning testified that the subject property sold in 2003 for $425,000 and subsequently sold in 2004 for $415,000. According to Lonning, the property was originally listed for $399,000 when it was offered for sale by the Cheemas. The price was reduced to their $385,000 purchase price.

In Mr. Lonning's opinion, the dwelling was over-valued from "day one," and he believes the repeated reduction in purchase prices in the past years supports this belief. He believes his purchase price is evidence of the fair market value of the property on January 1, 2009. He testified that an appraisal for lending purposes was conducted at the time of his purchase by a drive-by method. According to Lonning, his mortgage was for the purchase price less their 20% down payment amount.

County Assessor Tami McFarland testified that the previous owners filed their protest with the Board of Review. Her office has had no contact with the Lonnings and has no indication that the Cheemas gave permission to the Lonnings to file this appeal. She testified that it is not her usual practice to look at sales of the property past the assessment date. She would not ordinarily consider the Lonnings' June 2009 purchase price since it was past the January 1, 2009, assessment date. In McFarland's opinion the $400,180 assessment set by the Board of Review is correct.

Reviewing all the evidence, we find that although the Lonnings' January 1, 2009, assessment is higher than their June 5, 2009, purchase price, it does not necessarily retroactively establish the value on the assessment date. The appraisal, which was not offered as evidence, may well be limited to reflecting the fair market value at the time of purchase as well.

### *Conclusion of Law*

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all

of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

Lonnings Standing

The Board of Review challenged the Lonnings standing to bring this appeal. We finding that the Lonnings, as successors in interest to the Cheemas, have standing to continue as parties in this appeal. *See Security Mutual Ins. Assn. of Iowa v. Bd. of Review*, 467 N.W.2d 301, 304 (Iowa Ct. App. 1991) (permitting a purchaser and successor in interest to continue an appeal in the courts). The Lonnings could not have properly been a party to the Board of Review protest since they did not have an interest in the property at the time for filing a protest on May 5, 2009. We note the Lonnings did not even have a puchase agreement in place until after the May 5 filing deadline. Concurrently, the Cheemas could not have filed with the Appeal Board since they no longer were owners of the subject property on June 30, 2009, and had no legal interest. The position advanced by the Board of Review would essentially contravene the statutory rights of appeal granted to property owners by Chapter 441. For these reasons, we conclude that the Lonnings had standing, as successors in interest, to advance the property assessment appeal before this Board.

Lonnings Request for Relief

Secondly, the Board of Review objects to the Lonnings requesting a lower assessment in their appeal petition then had been requested in the Board of Review petition. We rely on the doctrine of judicial estoppel to resolve this issue. That general principle is intended to protect the integrity of the fact-finding process by administrative agencies and the court and may be properly raised by courts, even at the appellate level, on their own motion. *Winnebago Indus., Inc. v. Haverly*, 727 N.W.2d 567, 573 (Iowa 2006). The doctrine was comprehensively discussed in *Vennerberg Farms, Inc. V. IGF Insurance Co.*, 405 N.W.2d 810 (Iowa 1987). The Court noted that it was a "commonsense doctrine"

that prohibited a party who has successfully and unequivocally asserted a position in one proceeding from asserting an inconsistent position in a subsequent proceeding. *Id.* at 814. However, application of the rule is unwarranted absent judicial acceptance of the inconsistent position. *Tyson Food, Inc. v. Hedlund*, 740 N.W.2d 192, 196 (Iowa 2007).

This is analogous with case law that prohibits a board of review on appeal from challenging its own determination regarding property taxation. *Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review*, 613 N.W.2d 252,254 (Iowa 2000). The Court in *Carroll* relied on an early case holding that a board of review could not argue on appeal that the assessment should be raised above the value determined by the board itself. *First Nat'l Bank v. City Council*, 136 Iowa 203,208, 112 N.W.829, 830 (1907). In support of this the Court noted that Iowa Code section 441.38(1) made no provision for the board to challenge its own assessment. *Carroll*, 613 N.W.2d at 254.

The record shows that the Cheemas asserted a position before the Board of Review, but were not granted the relief requested. If the Board of Review had granted the full relief requested and reduced the assessment to $395,000, the Lonnings would be prohibited by the doctrine of judicial estoppel from requesting different relief from this Board. In this matter, the doctrine is inapplicable since the initial decision did not grant the relief requested. Therefore, Lonnings are not restricted from requesting further relief.

Grounds on Appeal

Thirdly, the Board of Review contends that the Lonnings are prohibited from asserting the ground of equity in this appeal since it was not indicated on the appeal form. We agree with this contention. There was no indication on the appeal petition to this Board that the Lonnings were claiming the ground of equity, therefore, it will not be considered in this appeal. The ground considered by this Board is whether the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(b).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

The Lonnings asserts the sale price should be the assessed value. In *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996), the Court determined "[i]t is clear from the wording of Iowa Code section 441.21(1)(b) that the sales price of the subject property in a normal sales transaction, just as the sale price of comparable property, is to be considered in arriving at market value but does not conclusively establish that value." Accordingly, we have considered the sale price the Lonnings paid in our decision, although since the sale occurred six months after the assessment date, we do not rely exclusively on this evidence to show over-assessment.

Viewing the evidence as a whole, we determine the Lonnings failed to provide substantial evidence to support their claim of over-assessment as of January 1, 2009. We, therefore, affirm the Lonnings' property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is $400,180, representing $61,250 in land value and $338,930 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Black Hawk County Board of Review is affirmed.

Dated this 3 day of November 2009.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Richard Stradley, Board Member

Karen Oberman
Karen Oberman, Board Chair
Not Present at Hearing/Reviewed Record

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Certificate of Service
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on 11-3, 2009
By: ✓ U.S. Mail ___ FAX
___ Hand Delivered ___ Overnight Courier
___ Certified Mail ___ Other
Signature